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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,458	04/19/2004	Mary Frances Sherlock	H053778.0020US0	2996
1200	7590	07/28/2005	EXAMINER	
AKIN, GUMP, STRAUSS, HAUER & FELD 1111 LOUISIANA STREET 44TH FLOOR HOUSTON, TX 77002			NGUYEN, TUAN N	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/827,458

Applicant(s)

SHERLOCK ET AL.

Examiner

Tuan N. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-50 is/are pending in the application.
- 4a) Of the above claim(s) 31-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/21/04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/19/04 & 11/22/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species IV: Fig. 50 in the reply filed on 5/9/05 is acknowledged. The applicant further identifies claims 1-2 and 4-50 as readable thereon. Contrary to the applicant's assertion, claims 31-50 are not readable on the elected species because there is no where in original specification that discloses that the structure member is a part of the bath structure, see pages 46-48 of the specification and the claims clearly distinguish between the bath and the structural member by the language "for moving a seat in a bath and adapted for use with a structural member" in lines 1-2 of claims 31, 36 and 44. It is inaccurate and indefinite to further claim the structure member is the bath, as claimed in claims 2424, 29 and 36 since their independent claims, as indicated above, clearly distinguish the two components. Accordingly, claims 31-50 are hereby withdrawn from consideration.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "604" on line 3 of page 48 et seq. is not in Figs. 48 and 49. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement

Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 13, 14 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to the difference between the "force compensation system" as claimed, in claims 13 and 23, and the bath system as claimed since the specification, on lines 3-5 of page 48, which indicates that the force compensation system includes the hinge 604, and the lifting system 28 in combination with the guiding assembly 26 and the frame 300, including the illustrated frame member 346A. Furthermore, "said frame" on line 2 of claims 13 and "the frame" on line 3 of claim 14 appears to lack antecedent basis in the claim, which makes it unclear as to what structure is being considered as "said frame" and it is unclear as to what structure is being claimed in claim 23.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4-14 and 16-23 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,624,019 (hereinafter Pennington-Richards).

Pennington-Richards discloses a bath system for moving a seat (9) in a bath (1), the bath having a bath bottom, a side wall and a wall behind the seat comprising a guiding assembly (side members that attached the seat to the guide rollers 12 within U-shaped cross-section channels 14) disposed within the bath (at about end 15) and between the wall behind the seat and the seat; a frame (16) disposed within the bath, wherein the frame is located between the wall behind the seat and the seat the frame is further disposed between the seat and the bath bottom, and wherein the guiding assembly is attached to the frame; and a lifting device (hydraulic system 2) for moving the seat between a raised position and a lowered position, wherein the raised position (when the seat is being swivel to face the sidewall to allow the user to sit on the seat to enter the bath) is laterally offset from the lowered position (when the seat is lowered into the bath to bathe the user) and closer to the wall behind the seat than the lowered position (see Fig. 2), and the guiding assembly guides the seat between the lowered position and the raised laterally offset position from the lowered position towards the side wall of the bath. The seat is rotatable relative to the guiding assembly in the raised position via a rotational assembly (see Fig. 4). The guiding assembly, the frame, and the lifting device can inherently be assembled in a mirror image. The frame is positioned in the bath using a plurality of fasteners (28,26). A source for generating a constant pressure on the hydraulic fluid (see col. 6, 33 et seq.) so as to move the

guiding assembly. The force on the seat would be the piston force from the weight of the seat and the force compensation system would be the water pressure to allow the bath system to compensate for the force.

5. Claims 4, 11-14, 16, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,226,183 (hereinafter Clark).

In regard to claim 4, Clark discloses a bath system (see Fig. 1) for moving a seat (16) in a bath (12), the bath having a bath bottom (40), a side wall and a wall behind the seat comprising a guiding assembly (housing 20) disposed within the bath and between the wall behind the seat and the seat; a frame (18,22) disposed within the bath, wherein the frame is located between the wall behind the seat and the seat the frame is further disposed between the seat and the bath bottom, and wherein the guiding assembly is attached to the frame; and a lifting device (hydraulic system 14) for moving the seat between a raised position and a lowered position, wherein the raised position (when the seat is being swivel to face the sidewall to allow the user to sit on the seat to enter the bath) is laterally offset from the lowered position (when the seat is lowered into the bath to bathe the user), and the guiding assembly guides the seat between the lowered position and the raised laterally offset position from the lowered position towards the side wall of the bath.

In regard to claim 11, Clark discloses a bath system (see Fig. 1) adapted for use with a bath (12) having a side wall comprising a seat (16) having a seat back; a guiding assembly (18,22) for guiding movement of the seat between a lowered position and a raised position toward the side wall of the bath (when the seat is being swivel to face

the sidewall to allow the user to sit on the seat to enter the bath); and a lifting device (hydraulic system 14) for moving the guiding assembly, wherein the seat back substantially covers the guiding assembly and the lifting device, and the seat back is movable between an operating position and an access position to allow access to the guiding assembly and the lifting device.

In regard to claim 12, the seat is pivoted from the guiding assembly (at about 26).

In regard to claim 13, as best understood, a force compensation system to move the frame away from the bath to allow access to the bath adjacent the frame (stabilizer 10 allows the system to stay stationary or to move to provide the function as claimed).

In regard to claim 14, a rotation assembly (about 26), wherein the rotation assembly is connected to the guiding assembly via housing (20).

In regard to claims 16 and 18, the claim is the combination of claim 12 and the frame of claim 4, which have been addressed above.

In regard to claim 19, the frame (18,22) is positioned in the bath using a plurality of fasteners (23).

6. Claims 20, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,307,204 (hereinafter Cotner).

In regard to claims 20 and 23 (as best understood), Cotner discloses a bath system (see Fig. 3) adapted for use with a bath (12) having a side wall comprising a frame (26) disposed within the bath, a seat (66) having a seat back (68); a guiding assembly (58) connected to the frame and for guiding movement of the seat between a lowered position and a raised position from the lowered position (see Fig. 3); a lifting

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device (hydraulic 74) in association with the guiding assembly for moving it; a hydraulic fluid (water); and a source (see Fig. 12) for generating a constant pressure on the hydraulic fluid, wherein the lifting device uses the hydraulic fluid for moving the guiding assembly.

In regard to claim 22, the lifting device is connected between the guiding assembly (58) and the frame (26) via post (34).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clark in view of U.S. Patent 4,343,052 (hereinafter Guenther).

Clark discloses that one skilled in the art can provide a variety of different arms (see col. 3, lines 52-55). Attention is directed to Guenther, which discloses a telescopic support arm within the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the arm (32) of Clark telescoping as suggested by Clark.

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pennington-Richards in view of U.S. Patent 4,343,052 (hereinafter Guenther).

Although the Pennington-Richards arms (19) are not telescoping. Attention is directed to Guenther, which discloses a telescopic support arm within the art.

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Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the arm (19) of Pennington-Richards telescoping so as to provide a flexible adjustment for different users.

9. Claims 24-27, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB2262436A (hereinafter Musson) in view of U.S. Patent 5,341,820 (hereinafter Hammett).

Musson discloses a bath system (see Fig. 5) for moving a seat (45) in a bath (2), the bath having a side wall and a wall (6) behind the seat comprising a guiding assembly (138,139) disposed within the bath and between the wall behind the seat and the seat; a lifting device (108) for moving the seat between a raised position and a lowered position, wherein the guiding assembly moves between the lowered position and the raised position from the lowered position; a hydraulic fluid having a pressure (see page 4, the 5th paragraph); and a pressure generation mechanism (combined hydraulic pump and control unit 66) which includes a pump and the control unit could obviously includes a pressure switch for controlling the operation of the pump. Although the Musson reference does not disclose a remote control system for activating the pump, attention is directed to the Hammett reference, which discloses a bath system for lowering and raising a patient in a bath having a remote control system with a valve as claimed (see col. 3, line 10 et seq.) to allow a user to control the device remotely.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the Musson device, a remote control system with a

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valve as claimed as, for example, taught by Hammett in order to allow a user to control the device remotely.

10. Claims 24-27, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pennington-Richards in view of U.S. Patent 5,341,820 (hereinafter Hammett).

Although the Pennington-Richards reference does not disclose a remote control system for activating the pump, attention is directed to the Hammett reference, which discloses a bath system for lowering and raising a patient in a bath having a remote control system as claimed (see col. 3, line 10 et seq.) to allow a user to control the device remotely. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the Musson device, a remote control system with a valve as claimed as, for example, taught by Hammett in order to allow a user to control the device remotely.

11. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Musson in view of Hammett as applied to claims 16 and 19 above, and further in view of U.S. Patent 4,959,957 (hereinafter Schmale).

Although the Musson reference does not disclose the pressure generation mechanism comprises an accumulator, attention is directed to the Schmale reference, which discloses a hydraulic actuating unit for raising hospital bed comprising a pressure generation mechanism comprises an accumulator system. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the hydraulic pump system of Musson with an accumulator system as, for

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example, taught by Schmale, where in so doing would involve mere substitution of one functional equivalent pressure generation mechanism for another and the selection of any of these known equivalents to generate fluid pressure would perform equally well on the Musson device.

12. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pennington-Richards in view of Hammett as applied to claims 24 and 27 above, and further in view of U.S. Patent 4,959,957 (hereinafter Schmale).

Although the Pennington-Richards reference does not disclose the pressure generation mechanism comprises an accumulator, attention is directed to the Schmale reference, which discloses a hydraulic actuating unit for raising hospital bed comprising a pressure generation mechanism comprises an accumulator system. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the hydraulic pump system of Musson with an accumulator system as, for example, taught by Schmale, where in so doing would involve mere substitution of one functional equivalent pressure generation mechanism for another and the selection of any of these known equivalents to generate fluid pressure would perform equally well on the Musson device.

Double Patenting

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. Claims 4, 10-16, 18-20 and 22-30 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of copending Application No. 10/703,942. Although the conflicting claims are not identical, they are not patentably distinct from each other because they contain similar structures but slightly different wording.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

15. Claims 4, 10-12, 14, 16 and 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,643,860. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 4, 10-12, 14, 16 and 18 are a broader version and include all of the limitations of claims 1-20 of U.S. Patent No. 6,643,860.

16. Claims 4, 10-12, 14-16, 18, 20, 22 and 24-30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-54 of U.S. Patent No. 6,643,861. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 4, 10-12, 14-

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16, 18, 20, 22 and 24-30 are a broader version and include all of the limitations of claims 1-54 of U.S. Patent No. 6,643,861.


Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Anscombe-Black et al. discloses another lift assembly.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tuan Nguyen
Primary Examiner
Art Unit 3751
7/22/05

TN